IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's Order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

AO No. 429 of 2004
(Old AO No. 323 of 2000)

Date of decision :-03-7-2006

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date :-03-7-2006 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

A.O. No. 429 of 2004
(Old A.O.No. 323 of 2000)

Smt. Chameli Devi
W/o Ram Avatar
R/o 183 / 46, L.I.G. Avas Vikas Colony
District – Rudrapur … claimant / Appellant

Versus

1. Smt. Manju Walia
   W/o Gurdayal Walia
   R/o A-175, Avas Vikas Colony, Kichcha
   District – Nainital …. Owner/respondent

2. The New India Assurance Co. Ltd.
   Through Divisional Manager
   15, M.G. Marg
   District – Allahabad …Insurer/respondent

Sri Bhupendra Singh, learned counsel for the appellant.
Sri R.B. Agarwal, learned counsel for the respondent.

Hon'ble J.C.S. Rawat, J.

1. This is an appeal against the judgment and award dated 30.11.1999 passed by Sri Satish Chandra Singh, the then Presiding Officer of the Tribunal / Special Judge (C.B.I.), Nainital in Motor Accident Claim Petition No. 113 of 1999.

2. Brief facts for the disposal of this appeal are that on 27.10.1994 at about 10:35 pm., the deceased was going on two wheelers in which the appellant was a pillion rider from Rudrapur to kichha. When the deceased reached Devria Choki, the offending truck bearing No. URR 1160 coming from the opposite direction knocked down the scooter causing the fatal injuries to the deceased and also grievous injuries to the appellant, i.e., deceased

wife. The injured succumbed to his injuries at the spot. Thereafter, the matter was reported to the police. It is alleged in the petition that the deceased was 35 years of age at the time of the accident and he was earning a monthly salary of Rs. 2,667.50. The deceased was a clerk in the Rudra Vilas Co-Operative Sugar Mill. The said offending vehicle was owned by the respondent No.1 and it was insured with the respondent No. 2. It was further alleged that the offending truck was driven rashly and negligently by the driver.

3. The owner-the respondent No. 1 and the insurance company-Respondent No. 2 contested the claim petition and contended that the deceased would have been insured with the employer-Rudra Vilas Co-Operative Sugar Mill and he could get the compensation from there. It was further alleged that the driver of the offending truck was not rash and negligent while hitting the scooter of the deceased. It was further alleged that the deceased was driving the vehicle on the wrong side and he himself contributed to the accident.

4. After appraisal of the pleadings of the parties, the learned Tribunal framed the necessary issues.

5. The claimant-appellant adduced the evidence of herself as PW1 who had narrated the entire incident and she was the pillion rider of the scooter to which the deceased was driving at the time of the incident. The appellant also filed the salary certificate in which it has been shown that the deceased was getting a sum of Rs. 2,667.50 from Rudra Vilas Co-Operative Sugar Mill.

6. After appraisal of the evidence on record, the Tribunal held that the driver of the offending vehicle was rash and negligent at the time of the accident. The Tribunal also held that the deceased was earning a sum o fRs. 2,667.50 per month as salary from the Rudra Vilas Co-Operative Sugar Mill. The learned Tribunal based the calculation for the loss of income on the monthly salary of Rs. 2667.50 which the deceased was getting at the time of the accident and the dependency was calculated @ 2/3rd of this monthly income. The age of the deceased was held 35 years as given in the post mortem report and corroborated by the statement of the appellant. The Tribunal Awarded a sum of Rs. 1,75,000/- as compensation. Out of which the Tribunal also awarded a sum of Rs. 2,500/- for funeral expenses and Rs. 2,500/- for loss of love and affection.

7. Feeling aggrieved by the said award of the learned Tribunal, the present appeal has been filed before this court.

8. Learned counsel for the appellant contended that the Tribunal did not assess the compensation properly. It was further contended that the learned Tribunal had not considered the claim of the appellant for the future loss of the income. He further contended that the Tribunal has awarded a sum of Rs. 1,75,000/- arbitrarily without any basis. He further contended that the Tribunal had not considered the record that the salary of the deceased was to be increased from 2,667.50 to 4,469.50 after five years an increase of average of 35% per year. The learned counsel for the appellant further contended that if

the future prospects would have been considered, the amount would have been calculated about 7 lacs. Learned counsel for the Insurance Company Sri. R.B. Agarwal refuted the contention and contended that the multiplier system is the best suited system and that should be applied in the present case also. The appellant had also stated in her evidence that the offending truck hit the deceased who was driving the scooter at the time of the accident and the driver of the offending truck was driving the vehicle rashly and negligently. She was a pillion rider in the two wheelers of her husband. She had seen the accident and she has categorically stated that the offending truck came on the wrong side and the offending truck hit the deceased by which the deceased died at the spot. The respondents had not adduced any evidence against the said evidence. Thus the evidence of the appellant is unrebutted, credible and cogent. The respondent had taken a case that the deceased himself contributed to the accident. The respondents had not adduced any evidence to that effect, as such, the contributory negligence cannot be held in this case. The appellant had filed the monthly salary certificates which reveals that the deceased was getting a sum of Rs. 2,667.50 as a monthly salary from the Rudra Vilas Co-Operative Sugar Mill and he was working as a clerk there. This evidence is also unrebutted evidence. The learned Tribunal had rightly observed that the respondents had not put even a suggestion to the appellant that the said salary certificate is wrong and incorrect. Thus, this salary certificate cannot be disbelieved. The appellant had stated in his evidence that the age of the deceased was 35 years and the post mortem report also reveals

that the age of the deceased was 35 years. Thus there were ample evidence on record that the deceased was 35 years of age at the time of the accident. It is also settled position of law that while assessing the compensation, it should be just and proper. In the catena of judgments, structured formula as provided under Second Schedule of Section 163-A of Motor Vehicles Act would be a safe guide to calculate the amount for just compensation. Section 168 of the of the Motor Vehicles Act lays down guidelines for determination of the amount of the compensation in terms of the Section 166 thereof. Deviation from the structured formula, however, as has been held in catena of decision of the court may be resorted to in exceptional cases. In the instant case, the age of the deceased was 35 years and he was earning a sum of Rs. 2,667.50 p.m. Thus, the annual income of the deceased comes to Rs. 32,010/-. After deducting 1/3 as provided under Section 163-A Second Schedule it comes to Rs. 21,340/-. Learned counsel for the appellant contended that the multiplier of 17 will be appropriate in this case. According to the Second Schedule of 163-A, the age of the deceased was 35 years. Thus according to the Schedule, the multiplier of 16 would be applied. It was contended that the multiplier of 16 should not been awarded by the Court. Learned counsel for the appellant further relied upon the decision of the Apex Court in **(2005) 8 SCC 473, Managing Director, TNSTC Ltd., Vs. K.I. Bindu and others.** In the instant case the deceased was 34 years of age. According to Second Schedule of 163-A of Motor Vehicles Act, the multiplier of 16 was to be applied but the multiplier of 13 was made applicable in this case. Thus it would be just and proper

to apply the multiplier of 13 in this case. Thus the total compensation comes to Rs. 2,77,420/-.

9. Learned counsel for the appellant further contended that the future prospects of the deceased should be taken into consideration. Learned counsel for the appellant also contended that the salary for the deceased would have been Rs. 4,469.50 in June, 1999 after a period of five years. Learned counsel for the appellant further relied upon the decision of the Apex Court reported in **(2003) 3 SCC 148, Abati Bezbaruah Vs. Dy. Director General, Geological Survey of India,** wherein it has been held that the future prospects of the deceased may be taken into account. The learned counsel for the Insurance Company also relied upon the decision of the Apex Court in **2006 AIR SCW 1116, Bijoy Kumar Dugar Vs. Bidyadhar Dutt & Ors** wherein it has been held that the future prospects of the deceased should not be taken into account. Learned counsel for the appellant only filed a certificate after a lapse of five years that the salary of the deceased was going to be increased. It is well settled principle that the compensation should be a pecuniary loss to the dependents by the death of a person concerned. While calculating the compensation annual dependency of the dependents should be determined in terms of the annual loss. To determine the quantum of compensation, the earning of the deceased at the time of the accident and the amount which the deceased was spending for the dependents are the basic determinative factors. The resultant figure should then be multiplied by a suitable multiplier. The multiplier is applied not for the entire span of life of a person, but it is

applied taking into the consideration the imponderables in life, immediate availability of the amount to the dependents, the expectancy of the period of dependency of the claimants and so many other factors. The only evidence that the deceased would earn a sum of Rs. 4,469.50 after so many years is a contingent amount which may or which may not get at that time. During this period the deceased may suffer from any illness, disability and unemployment have to be taken into consideration.

10. It was further contended that the Tribunal had not correctly assessed the consortium. The consortium has been awarded @ 2,500/- whereas under the Schedule-II of the Section 163-A, consortium of Rs. 5,000/- had been awarded. As such, the amount is liable to be enhanced from Rs. 2,500/- to Rs. 5,000/-. Accordingly, the amount is enhanced from Rs. 2,500/- to 5,000/-.

11. On the basis of the assessment of evidence on record, I come to the conclusion that the learned Tribunal was not correct in applying the multiplier. The appropriate multiplier would be of 13 in this case. After applying the multiplier of 13, the compensation comes to Rs. 2,77,420/-.

12. The claimant/appellant is also entitled to get the interest @ 8% instead of 12% as awarded by the tribunal from the date of the award.

13. In view of the foregoing discussion, I come to the conclusion that the appeal is liable to be partly allowed

and the impugned judgment and award passed by the Tribunal deserves to be modified to the extent that the appellant/claimant should be paid an amount of Rs. 2,84,970/- as compensation instead of Rs. 1,80,000/- awarded by the Tribunal.

14. Accordingly the appeal is partly allowed. The judgment and award dated 30.11.1999 passed by the Tribunal / Special Judge (C.B.I.), Nainital in MACP No. 113 of 1999 is modified upto the extent that the appellant/claimant is entitled to get Rs. 2,84,970/- as compensation instead of Rs. 1,80,000/- as has been awarded by the Tribunal. No order as to cost.

(J.C.S. RAWAT, J.)

03rd July, 2006
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